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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

R.J.,

Defendant and Appellant.

B281320

Los Angeles County  
Super. Ct. No. VA138832

APPEAL from a judgment of the Superior Court of Los Angeles County, Raul A. Sahagun, Judge. Reversed and remanded, with directions.

Nancy J. King, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb, David E. Madeo and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant R.J. was 15 years old when he was arrested and charged with first degree murder and other serious offenses. The juvenile court transferred his case to adult court for criminal prosecution, and a jury convicted appellant of first degree murder, premeditated attempted murder, assault with a firearm, and shooting at an inhabited dwelling. The court imposed an aggregate sentence of 51 years to life, which included a 20-year firearm enhancement.

Originally, appellant challenged the premeditated attempted murder, assault with a firearm, and shooting at an inhabited dwelling convictions on the ground that the trial court improperly consolidated these offenses with the first degree murder offense and permitted the cases to be tried together. (See Pen. Code, § 954.) In the alternative, appellant sought remand for resentencing to allow the trial court to determine whether to dismiss the firearm enhancement under Penal Code section 1385.<sup>1</sup>

However, after the enactment of Senate Bill No. 1391 (2017-2018 Reg. Sess.) (SB 1391), which prohibits the People from moving to prosecute offenders under age 16 in adult court, appellant requested leave to file a supplemental brief arguing we should deem his convictions to be juvenile adjudications and remand the matter to the juvenile court for disposition. We granted leave and invited the Attorney General to file a supplemental respondent's brief addressing the issue. The

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<sup>1</sup> After appellant's sentencing and while his case was on appeal, the Legislature amended Penal Code sections 12022.5, subdivisions (c) and 12022.53, subdivision (h) to authorize a court to strike or dismiss a firearm enhancement at the time of sentencing or resentencing as provided in Penal Code section 1385. (See Stats. 2017, ch. 682 (SB 620), § 1, eff. Jan. 1, 2018.)

Attorney General agrees that appellant is entitled to the requested relief. We agree with the parties and will adopt that remedy. In light of our disposition, we need not discuss the facts of appellant's offenses.

Under the Public Safety and Rehabilitation Act of 2016 (Proposition 57), the People could petition to transfer a 14- or 15-year-old minor from juvenile court to adult court for criminal prosecution if, among other things, the minor was charged with specified serious offenses, including murder and assault with a firearm. (See former Welf. & Inst. Code, § 707, subds. (a)(1), (b), eff. Nov. 9, 2016; *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303 (*Lara*).)<sup>2</sup> But as of January 1, 2019, when SB 1391 went into effect, the People are no longer authorized to file such a petition if, as here, the minor was under 16 at the time of the alleged offenses and was apprehended before the end of juvenile court jurisdiction. (§ 707, subd. (a)(2), added by Stats. 2018, ch. 1012, § 1.)

Under *In re Estrada* (1965) 63 Cal.2d 740, we must presume, absent a contrary indication, that the Legislature intends a statutory amendment that reduces criminal punishment to apply retroactively to any case in which the judgment is not yet final on the date the statute takes effect. (*Id.* at p. 744 [“If the amendatory statute lessening punishment becomes effective prior to the date the judgment of conviction becomes final then . . . it, and not the old statute in effect when the prohibited act was committed, applies.”].) In *Lara*, our Supreme Court extended this logic to Proposition 57, which prohibited prosecutors from charging juveniles with crimes directly in adult court. (*Lara, supra*, 4 Cal.5th at p. 303.)

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<sup>2</sup> Statutory references are to the Welfare and Institutions Code, unless otherwise designated.

The *Lara* court reasoned that the “possibility of being treated as a juvenile in juvenile court—where rehabilitation is the goal—rather than being tried and sentenced as an adult can result in dramatically different and more lenient treatment” and, therefore, “*Estrada’s* inference of retroactivity applies.” (*Lara*, at p. 303.)

The same rationale applies to SB 1391, which, similar to Proposition 57, repealed the People’s authority to prosecute 14- and 15-year-old minors as adults under most circumstances. Because the judgment on appeal is not yet final, we agree with the parties that SB 1391 applies retroactively to this case and appellant is entitled to remand for a new dispositional hearing in the juvenile court.

### **DISPOSITION**

R.J.'s adult convictions and sentence are reversed. The cause is remanded to the juvenile court for a dispositional hearing. The juvenile court is directed to treat R.J.'s convictions and enhancement as juvenile adjudications and to impose an appropriate disposition within its discretion. (See *Lara, supra*, 4 Cal.5th at pp. 310, 313.)

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.